

11/19/2007 12:27

550 324-8883

APWU LOCAL #71

PAGE 01

# SUMMONS (CITACION JUDICIAL)

## NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

Bernard "Skip" Whalen Area Local aka American Postal Workers Union  
Local #71

YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):  
Kenneth G. Floyd



SUM-100

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

SEP 18 07

KIRI TORRE  
CLERK OFFICER/CLERK  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA  
J. Zenzen

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol](http://www.courtinfo.ca.gov/selfhelp/espanol)), en la biblioteca de leyes de su condado o en la corte que lo queda más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte lo podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol](http://www.courtinfo.ca.gov/selfhelp/espanol)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court, County of Santa Clara  
191 North First Street  
San Jose, California 95113

CASE NUMBER  
(Número del Caso):

107CV094120

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
David L. Samuelson, Esq., 897 Independence Avenue, Suite 2D, Mountain View, California 94043

DATE: SEP 18 2007  
(Fecha)

Kiri Torre

Chief Executive Officer/Clerk

Clerk, by  
(Secretario)

J. Zenzen

Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.

2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): Bernard "Skip" Whalen Area Local aka American Postal Workers Union #71

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.80 (minor)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.70 (conservatee)

☐ CCP 416.40 (association or partnership)

☐ CCP 416.80 (authorized person)

☒ other (specify): Unknown organization - union

4. ☐ by personal delivery on (date):

Form Adopted for Mandatory Use  
Judicial Council of California  
SUM-100 (Rev. January 1, 2004)

SUMMONS

Page 1 of 1  
Code of Civil Procedure §§ 412.20, 405  
Annotated, Legislator's, Court, and Attorney's Editions

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650-524-8883

APWU LOCAL #71

PAGE 02

PLD-C-001

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>name, State Bar number, and address:</i> David L. Samuelson, Esq. 897 Independence Avenue, Suite 2D Mountain View, California 94043  TELEPHONE NO: (408) 294-1111 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Kenneth G. Floyd		FOR COURT USE ONLY  SEP 18 07  SAN JOSE REC. OFFICER/CLERK SUPERIOR COURT OF CA COUNTY OF SANTA CLARA J. Zenzen
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA STREET ADDRESS: 191 North First Street MAILING ADDRESS: Same CITY AND ZIP CODE: San Jose, California 95113 BRANCH NAME: Civil		
PLAINTIFF: KENNETH G. FLOYD  DEFENDANT: Bernard "SKIP" WHALEN AREA LOCAL aka American <i>Postal Workers Union #71</i> <input checked="" type="checkbox"/> DOES 1 TO 100		
<input type="checkbox"/> COMPLAINT <input checked="" type="checkbox"/> CONTRACT <input type="checkbox"/> CROSS-COMPLAINT <input type="checkbox"/> AMENDED COMPLAINT (Number): First <input type="checkbox"/> AMENDED CROSS-COMPLAINT (Number):		
Jurisdiction (check all that apply): <input type="checkbox"/> ACTION IS A LIMITED CIVIL CASE Amount demanded <input type="checkbox"/> does not exceed \$10,000 <input type="checkbox"/> exceeds \$10,000 but does not exceed \$25,000 <input checked="" type="checkbox"/> ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000) <input type="checkbox"/> ACTION IS RECLASSIFIED by this amended complaint or cross-complaint <input type="checkbox"/> from limited to unlimited <input type="checkbox"/> from unlimited to limited		CASE NUMBER: 107CV094120

1. Plaintiff (name or names):  
 KENNETH G. FLOYD  
 alleges cause of action against defendant (name or names):  
 Bernard "SKIP" WHALEN AREA LOCAL aka American Postal Workers Union Local 71
2. This pleading, including attachments and exhibits, consists of the following number of pages:
3. a. Each plaintiff named above is a competent adult  
☐ except plaintiff (name):  
 (1) ☐ a corporation qualified to do business in California  
 (2) ☐ an unincorporated entity (describe):  
 (3) ☐ other (specify):

- b. ☐ Plaintiff (name):  
 a. ☐ has complied with the fictitious business name laws and is doing business under the fictitious name (specify):  
 b. ☐ has complied with all licensing requirements as a licensed (specify):  
 c. ☐ Information about additional plaintiffs who are not competent adults is shown in Attachment 3c.

4. a. Each defendant named above is a natural person  
☒ except defendant (name): APWU Local #71 ☐ except defendant (name):  
 (1) ☒ a business organization, form unknown (1) ☐ a business organization, form unknown  
 (2) ☐ a corporation (2) ☐ a corporation  
 (3) ☐ an unincorporated entity (describe): (3) ☐ an unincorporated entity (describe):  
 (4) ☐ a public entity (describe): (4) ☐ a public entity (describe):  
 (5) ☐ other (specify): (5) ☐ other (specify):

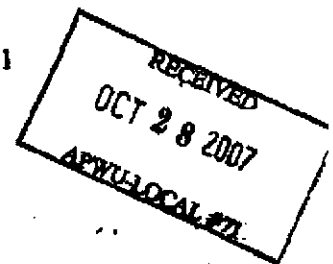
\* If this form is used as a cross-complaint, plaintiff means cross-complaint and defendant means cross-defendant.

Page 1 of 2

 Form Approved for Optional Use  
 Judicial Council of California  
 PLD-C-001 (Rev. January 1, 2007)

COMPLAINT—Contract

Code of Civil Procedure, § 425.12

 American LegalNet, Inc.  
 www.AmericanLegalNet.com


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650-324-8883

APWU LOCAL #7

PLD-C-001

SHORT TITLE Floyd v. BERNARD "SKIP" WHALEN AREA LOCAL	CASE NUMBER: 107CV094120
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4. (Continued)
- b. The true names of defendants sued as Does are unknown to plaintiff.
- (1) ☒ Doe defendants (specify Doe numbers): 1-10 were the agents or employees of the named defendants and acted within the scope of that agency or employment.
- (2) ☒ Doe defendants (specify Doe numbers): 11-20 are persons whose capacities are unknown to plaintiff.
- c. ☐ Information about additional defendants who are not natural persons is contained in Attachment 4c.
- d. ☐ Defendants who are joined under Code of Civil Procedure section 382 are (names):
5. ☐ Plaintiff is required to comply with a claims statute, and
- a. ☐ has complied with applicable claims statutes, or
- b. ☐ is excused from complying because (specify):
6. ☐ This action is subject to ☐ Civil Code section 1812.10 ☐ Civil Code section 2984.4.
7. This court is the proper court because
- a. ☒ a defendant entered into the contract here.
- b. ☐ a defendant lived here when the contract was entered into.
- c. ☐ a defendant lives here now.
- d. ☒ the contract was to be performed here.
- e. ☒ a defendant is a corporation or unincorporated association and its principal place of business is here.
- f. ☐ real property that is the subject of this action is located here.
- g. ☐ other (specify):
8. The following causes of action are attached and the statements above apply to each (each complaint must have one or more causes of action attached):
- ☒ Breach of Contract
- ☒ Common Counts
- ☐ Other (specify):
9. ☐ Other allegations:
10. Plaintiff prays for judgment for costs of suit; for such relief as is fair, just, and equitable; and for
- a. ☒ damages of: \$34,298.48
- b. ☒ interest on the damages
- (1) ☒ according to proof
- (2) ☐ at the rate of (specify): percent per year from (date):
- c. ☐ attorney's fees
- (1) ☐ of: \$
- (2) ☐ according to proof.
- d. ☒ other (specify):
11. ☐ The paragraphs of this pleading alleged on information and belief are as follows (specify paragraph numbers):

Date: September 18, 2007

David L. Samuelson

(TYPE OR PRINT NAME)

  
(SIGNATURE OF PLAINTIFF OR ATTORNEY)

(If you wish to verify this pleading, affix a verification.)

PLD-C-001 (Rev. January 1, 2007)

COMPLAINT—Contract

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APWU LOCAL #71

PLD-C-001(2)

SHORT TITLE: Floyd v. Bernard "Skip" Whalen Area Local	CASE NUMBER: 107CV094120
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First CAUSE OF ACTION—Common Counts  
(number)

ATTACHMENT TO ☒ Complaint ☐ Cross-Complaint

(Use a separate cause of action form for each cause of action.)

CC-1, Plaintiff (name): KENNETH G. FLOYD

alleges that defendant (name): Bernard "SKIP" WHALEN AREA LOCAL

became indebted to ☒ plaintiff ☐ other (name):

a. ☒ within the last four years

(1) ☒ on an open book account for money due.

(2) ☐ because an account was stated in writing by and between plaintiff and defendant in which it was agreed that defendant was indebted to plaintiff.

b. ☒ within the last ☒ two years ☐ four years

(1) ☐ for money had and received by defendant for the use and benefit of plaintiff, for work, labor,

(2) ☒ services and materials rendered at the special instance and request of defendant and for which defendant promised to pay plaintiff

☒ the sum of \$

☐ the reasonable value.

(3) ☐ for goods, wares, and merchandise sold and delivered to defendant and for which defendant promised to pay plaintiff

☐ the sum of \$

☐ the reasonable value.

(4) ☒ for money lent by plaintiff to defendant at defendant's request.

(5) ☒ for money paid, laid out, and expended to or for defendant at defendant's special instance and request.

(6) ☒ other (specify):

The monies due Plaintiff are for credit card charges made on behalf of the Defendant in the sum of \$27,704.04 for which the Defendant has failed to pay Plaintiff upon demand by Plaintiff. Further, Defendant has failed to pay Defendant for accumulated sick leave in the sum of \$6,544.44 following the conclusion of Plaintiff's employment by Defendant and demand of Plaintiff.

CC-2. \$ \$34,248.48

, which is the reasonable value, is due and unpaid despite plaintiff's demand,

plus prejudgment interest ☒ according to proof ☐ at the rate of \_\_\_\_\_ percent per year

from (date):

CC-3. ☐ Plaintiff is entitled to attorney fees by an agreement or a statute

☐ of \$

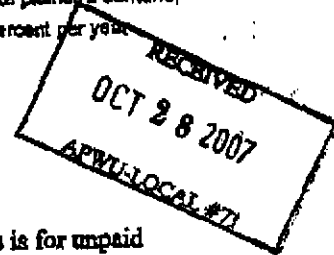
☐ according to proof.

CC-4. ☒ Other:

All consequential damages according to proof. A portion of the damages is for unpaid wages for which the Plaintiff is requesting any applicable penalties and damages for failure by Defendant to pay wages when due.

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APWU LOCAL #71

PLD-C-001(1)

SHORT TITLE:

Floyd v. Benard "Skip" Whalen Area Local

CASE NUMBER:

107CV094120

Second

## CAUSE OF ACTION—Breach of Contract

ATTACHMENT TO ☒ Complaint ☐ Cross-Complaint

(Use a separate cause of action form for each cause of action.)

BC-1. Plaintiff (name): Kenneth G. Floyd

alleges that on or about (date): January 1, 2002

a ☒ written ☐ oral ☐ other (specify):

agreement was made between (name parties to agreement):

Kenneth G. Floyd and the Bernard "Skip" Whalen Area Local aka APWU Local #71

☐ A copy of the agreement is attached as Exhibit A, or☒ The essential terms of the agreement ☐ are stated in Attachment BC-1 ☒ are as follows (specify):

The Plaintiff was elected as President of the APWU Local #71 and was to be paid according to the terms of the local's Constitution commencing January 1, 2002 with the 3 year term ending December 31, 2005. At the conclusion of the Plaintiff's term he has been owed the sum of \$6,544.44 in accumulated sick leave which was to be paid immediately following the conclusion of his term on December 31, 2005.

BC-2. On or about (date): January 1, 2006

defendant breached the agreement by ☐ the acts specified in Attachment BC-2 ☒ the following acts (specify):

Failing to pay the Plaintiff in full his accumulated sick leave upon the conclusion of his term of office.

BC-3. Plaintiff has performed all obligations to defendant except those obligations plaintiff was prevented or excused from performing.

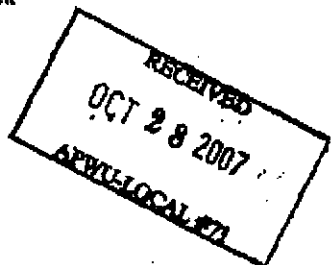
BC-4. Plaintiff suffered damages legally (proximately) caused by defendant's breach of the agreement

☐ as stated in Attachment BC-4 ☒ as follows (specify):

The accumulated sick leave due Plaintiff is the sum of \$6,544.44.

BC-5. ☐ Plaintiff is entitled to attorney fees by an agreement or a statute☐ of \$:☐ according to proof.BC-6. ☒ Other:

All consequential damages and damages available to Plaintiff due to the Defendant's failure to pay his wages when due.



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APWJ LOCAL #7

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**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA**  
**ALTERNATIVE DISPUTE RESOLUTION**  
**INFORMATION SHEET / CIVIL DIVISION**

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Many cases can be resolved to the satisfaction of all parties without the necessity of traditional litigation, which can be expensive, time consuming, and stressful. The Court finds that it is in the best interests of the parties that they participate in alternatives to traditional litigation, including arbitration, mediation, neutral evaluation, special masters and referees, and settlement conferences. Therefore, all matters shall be referred to an appropriate form of Alternative Dispute Resolution (ADR) before they are set for trial, unless there is good cause to dispense with the ADR requirement.

***What is ADR?***

ADR is the general term for a wide variety of dispute resolution processes that are alternatives to litigation. Types of ADR processes include mediation, arbitration, neutral evaluation, special masters and referees, and settlement conferences, among others forms.

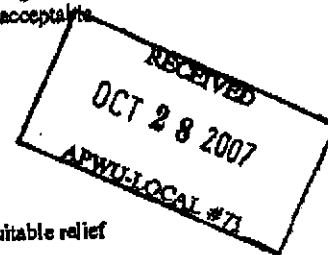
***What are the advantages of choosing ADR instead of litigation?***

ADR can have a number of advantages over litigation:

- < ADR can save time. A dispute can be resolved in a matter of months, or even weeks, while litigation can take years.
- < ADR can save money. Attorney's fees, court costs, and expert fees can be reduced or avoided altogether.
- < ADR provides more participation. Parties have more opportunities with ADR to express their interests and concerns, instead of focusing exclusively on legal rights.
- < ADR provides more control and flexibility. Parties can choose the ADR process that is most likely to bring a satisfactory resolution to their dispute.
- < ADR can reduce stress. ADR encourages cooperation and communication, while discouraging the adversarial atmosphere of litigation. Surveys of parties who have participated in an ADR process have found much greater satisfaction than with parties who have gone through litigation.

***What are the main forms of ADR offered by the Court?***

- < Mediation is an informal, confidential process in which a neutral party (the mediator) assists the parties in understanding their own interests, the interests of the other parties, and the practical and legal realities they all face. The mediator then helps the parties to explore options and arrive at a mutually acceptable resolution of the dispute. The mediator does not decide the dispute. The parties do.
- < Mediation may be appropriate when:
  - < The parties want a non-adversary procedure
  - < The parties have a continuing business or personal relationship
  - < Communication problems are interfering with a resolution
  - < There is an emotional element involved
  - < The parties are interested in an injunction, consent decree, or other form of equitable relief



-over-

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ALTERNATIVE DISPUTE RESOLUTION INFORMATION SHEET/ CIVIL DIVISION

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APWU LOCAL #71

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- < Arbitration is a normally informal process in which the neutral (the arbitrator) decides the dispute after hearing the evidence and arguments of the parties. The parties can agree to binding or non-binding arbitration. Binding arbitration is designed to give the parties a resolution of their dispute when they cannot agree by themselves or with a mediator. If the arbitration is non-binding, any party can reject the arbitrator's decision and request a trial.

Arbitration may be appropriate when:

- < The action is for personal injury, property damage, or breach of contract
  - < Only monetary damages are sought
  - < Witness testimony, under oath, is desired
  - < An advisory opinion is sought from an experienced litigator (if a non-binding arbitration)
- < Neutral evaluation is an informal process in which a neutral party (the evaluator) reviews the case with counsel and gives a non-binding assessment of the strengths and weaknesses on each side and the likely outcome. The neutral can help parties to identify issues, prepare stipulations, and draft discovery plans. The parties may use the neutral's evaluation to discuss settlement.

Neutral evaluation may be appropriate when:

- < The parties are far apart in their view of the law or value of the case
  - < The case involves a technical issue in which the evaluator has expertise
  - < Case planning assistance would be helpful and would save legal fees and costs
  - < The parties are interested in an injunction, consent decree, or other form of equitable relief
- < Special masters and referees are neutral parties who may be appointed by the court to obtain information or to make specific fact findings that may lead to a resolution of a dispute.

Special masters and referees can be particularly effective in complex cases with a number of parties, like construction disputes.

- < Settlement conferences are informal processes in which the neutral (a judge or an experienced attorney) meets with the parties or their attorneys, hears the facts of the dispute, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations.

Settlement conferences can be effective when the authority or expertise of the judge or experienced attorney may help the parties reach a resolution.

#### *What kind of disputes can be resolved by ADR?*

Although some disputes must go to court, almost any dispute can be resolved through ADR. This includes disputes involving business matters; civil rights; corporations; construction; consumer protection; contracts; copyrights; defamation; disabilities; discrimination; employment; environmental problems; harassment; health care; housing; insurance; intellectual property; labor; landlord/tenant; media; medical malpractice and other professional negligence; neighborhood problems; partnerships; patents; personal injury; probate; product liability; property damage; real estate; securities; and sports, among other matters.

#### *Where can you get assistance with selecting an appropriate form of ADR and a neutral for your case, for information about ADR procedures, or for other questions about ADR?*

##### *Contact:*

Santa Clara County Superior Court  
ADR Administrator  
408-882-2530

Santa Clara County DRPA Coordinator  
408-792-2704

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ALTERNATIVE DISPUTE RESOLUTION INFORMATION SHEET/ CIVIL DIVISION



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APWJ LOCAL #72

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ATTACHMENT CV-5012

**CIVIL LAWSUIT NOTICE**CASE NUMBER: 107 CV 094120

Superior Court of California, County of Santa Clara  
191 N. First St., San Jose, CA 95113

**READ THIS ENTIRE FORM**

**PLAINTIFFS** (the person(s) suing): Within 60 days after filing the lawsuit, you must serve each defendant with the *Complaint*, *Summons*, an *Alternative Dispute Resolution (ADR) Information Sheet*, and a copy of this *Civil Lawsuit Notice*, and you must file written proof of such service.

**DEFENDANTS** (The person(s) being sued): You must do each of the following to protect your rights:

1. You must file a written response to the *Complaint*, in the Clerk's Office of the Court, within 30 days of the date the *Summons* and *Complaint* were served on you;
2. You must send a copy of your written response to the plaintiff, and
3. You must attend the first Case Management Conference.

Warning: If you do not do these three things, you may automatically lose this case.

**RULES AND FORMS:** You must follow the California Rules of Court (CRC) and the Santa Clara County Superior Court Local Civil Rules and use proper forms. You can get legal information, view the rules and get forms, free of charge, from the Self-Service Center at 89 Notre Dame Avenue, San Jose (408-882-2900 x-2926), or from:

- State Rules and Judicial Council Forms: [www.courtinfo.ca.gov/forms](http://www.courtinfo.ca.gov/forms) and [www.courtinfo.ca.gov/rules](http://www.courtinfo.ca.gov/rules)
- Local Rules and Forms: <http://www.sccsuperiorcourt.org/civil/rule1toc.htm>
- Rose Printing: 408-293-8177 or [becky@rose-printing.com](mailto:becky@rose-printing.com) (there is a charge for forms)

For other local legal information, visit the Court's Self-Service website [www.sccselfservice.org](http://www.sccselfservice.org) and select "Civil"

**CASE MANAGEMENT CONFERENCE (CMC):** You must meet with the other parties and discuss the case, in person or by telephone, at least 30 calendar days before the CMC. You must also fill out, file and serve a *Case Management Statement* (Judicial Council form CM-110) at least 15 calendar days before the CMC.

You or your attorney must appear at the CMC. You may ask to appear by telephone – see Local Civil Rule 8.

Your Case Management Judge is: KEVIN MURPHY Department: 22

The 1<sup>st</sup> CMC is scheduled for: (Completed by Clerk of Court)

Date: 2/5/2008 Time: 3:00 PM in Department 22

The next CMC is scheduled for: (Completed by party if the 1<sup>st</sup> CMC was continued or has passed)

Date: \_\_\_\_\_ Time: \_\_\_\_\_ in Department \_\_\_\_\_

**ALTERNATIVE DISPUTE RESOLUTION (ADR):** If all parties have appeared and filed a completed *ADR Submission Form* (local form CV-5006) at least 15 days before the CMC, the Court will cancel the CMC and mail notice of an ADR Status Conference. Visit the Court's website at [www.sccsuperiorcourt.org/civ/ADR/](http://www.sccsuperiorcourt.org/civ/ADR/) or call the ADR Administrator (408-882-2100 x-2530) for a list of ADR providers and their qualifications, services, and fees.

**WARNING:** Sanctions may be imposed if you do not follow the California Rules of Court or the Local Rules of Court.



PLD-050

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Jonathan Weissglass (SBN 185008) Altshuler Berzon LLP 177 Post Street, Suite 300 San Francisco, CA 94108 ATTORNEY FOR (Name): Bernard "Skip" Whalen Area Local #71		TELEPHONE NO. (415) 421-7151	FOR COURT USE ONLY <b>ENDORSED</b> 2007 NOV 27 A 9:44 NINA TORRE, CLERK OF THE SUPERIOR COURT COUNTY OF SANTA CLARA, CALIFORNIA BY: _____ DEPUTY CLERK <b>M. Rosales</b>
NAME OF COURT: Superior Court, County of Santa Clara STREET ADDRESS: 191 North First Street MAILING ADDRESS: Same CITY AND ZIP CODE: San Jose, California 95113 BRANCH NAME: Civil			
PLAINTIFF: Kenneth G. Floyd			
DEFENDANT: Bernard "Skip" Whalen Area Local #71			
GENERAL DENIAL		CASE NUMBER: 107CV094120	

You MUST use this form for your general denial if the amount asked for in the complaint or the value of the property involved is \$1000 or less.

You MAY use this form if:

1. The complaint is not verified, OR
2. The complaint is verified, and the action is subject to the economic litigation procedures of the municipal and justice courts, EXCEPT

You MAY NOT use this form if the complaint is verified and involves a claim for more than \$1000 that has been assigned to a third party for collection.

(See Code of Civil Procedure sections 90-100, 431.30, and 431.40).

1. DEFENDANT (name): Bernard "Skip" Whalen Area Local #71  
generally denies each and every allegation of plaintiff's complaint.

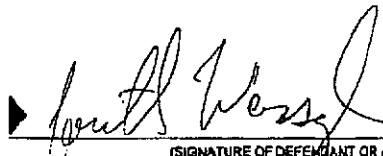
**BY FAX**

2. ☒ DEFENDANT states the following FACTS as separate affirmative defenses to plaintiff's complaint (attach additional pages if necessary):
1. The plaintiff has failed to exhaust his remedies under the Constitution and Bylaws of the American Postal Workers Union and the Constitution and Bylaws of Bernard "Skip" Whalen Area Local #71.
  2. The defendant has paid the plaintiff for his accumulated sick leave.
  3. The plaintiff comes to the court with unclean hands.
  4. The plaintiff has failed to state a claim upon which relief can be granted.

Date: November 27, 2007

Jonathan Weissglass

(TYPE OR PRINT NAME)



(SIGNATURE OF DEFENDANT OR ATTORNEY)

If you have a claim for damages or other relief against the plaintiff, the law may require you to state your claim in a special pleading called a cross-complaint or you may lose your claim. (See Code of Civil Procedure sections 426.10-426.40.)

The original of this General Denial must be filed with the clerk of this court with proof that a copy was served on each plaintiff's attorney and on each plaintiff not represented by an attorney. (See the other side for a proof of service.)

PLD-050

PLAINTIFF (name): Kenneth G. Floyd	CASE NUMBER:
DEFENDANT (name): Bernard "Skip" Whalen Area Local #71	107CV094120

## PROOF OF SERVICE

☐ Personal Service ☒ Mail

A General Denial may be served by anyone at least 18 years of age EXCEPT you or any other party to this legal action. Service is made in one of the following ways:

(1) Personally delivering a copy to the attorney for the other party or, if no attorney, to the other party.  
OR

(2) Mailing a copy, postage prepaid, to the last known address of the attorney for the other party or, if no attorney, to the other party.

Be sure whoever serves the General Denial fills out and signs a proof of service. File the proof of service with the court as soon as the General Denial is served.

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. I served a copy of the General Denial as follows (check either a or b):

a. ☐ Personal service. I personally delivered the General Denial as follows:

- (1) Name of person served:  
(2) Address where served:

- (3) Date served:  
(4) Time served:

b. ☒ Mail. I deposited the General Denial in the United States mail, in a sealed envelope with postage fully prepaid. The envelope was addressed and mailed as follows:

- (1) Name of person served: David L. Samuelson  
(2) Address: 897 Independence Avenue, Suite 2D  
Mountain View, CA 94043

- (3) Date of mailing: November 27, 2007  
(4) Place of mailing (city and state): San Francisco, CA 94108  
(5) I am a resident of or employed in the county where the General Denial was mailed.

c. My residence or business address is (specify):

Altshuler Berzon LLP  
177 Post Street, Suite 300  
San Francisco, CA 94108

d. My phone number is (specify):

(415) 421-7151

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: November 27, 2007

Sally Mendez

(TYPE OR PRINT NAME OF PERSON WHO SERVED THE GENERAL DENIAL)



(SIGNATURE OF PERSON WHO SERVED THE GENERAL DENIAL)

**PROOF OF SERVICE**

I am employed in the City and County of San Francisco, California. I am over the age of eighteen years and not a party to the within action; my business address is 177 Post Street, Suite 300, San Francisco, California 94108. On November 27, 2007, I served the following documents:

**NOTICE OF REMOVAL OF THE BERNARD "SKIP" WHALEN AREA LOCAL, AMERICAN POSTAL WORKERS UNION LOCAL #71**

By First Class Mail: I am readily familiar with the ordinary business practices of Altshuler Berzon LLP for the collection and processing of correspondence for mailing with the United States Postal Service. I sealed and placed each such envelope, with first-class postage thereon fully prepaid, for collection and mailing to the office of the addressee on the date shown herein in San Francisco, California.

**ADDRESSEE**

David L. Samuelson, Esq.  
894 Independence Avenue, Suite 2D  
Mountain View, CA 94043

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this November 27, 2007 at San Francisco, California.

  
Sally Mendez